

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Chapter 9
Case No. 13-53846

City of Detroit, Michigan,

Debtor.

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**INTERESTED PARTY DAVID SOLE'S RESPONSE TO DEBTOR'S MOTION IN
LIMINE TO EXCLUDE TESTIMONY OF SHARON MCPHAIL**

Now comes Interested Party David Sole and for his Response to Debtor's Motion in Limine to Exclude Testimony of Sharon McPhail [Docket 2159], states as follows:

1. Interested Party Sole's attorney first met Ms. McPhail at an event on Wednesday evening, December 11, 2013, and learned of her role in attempting to oppose the Pension Obligation Certificates (POC's) and related Interest Rate Swaps that are at the core of Debtor's Motion to Approve the Forbearance Agreement and the related Motion to Approve DIP financing.
2. On the basis of that meeting, Mr. Sole listed Ms. McPhail as a rebuttal witness in conformance with the Court's scheduling order relative to the motions scheduled to take place beginning December 17, 2013.
3. Mr. Sole's attorney met with Ms. McPhail at the earliest time possible on Sunday, December 15, 2013.
4. At that meeting, it was clear that Ms. McPhail did not have a great deal of knowledge of the particulars of the POC's and Swaps that are in part at the core of the upcoming hearing.

5. However, she was absolutely clear that she instinctively felt there was a potential risk to the city in assuming these financial instruments.
6. As her statement indicates, she was absolutely clear that she pressed the representatives of the banks, ratings agencies, law firms associated with these entities, and the City Chief Financial Officer, Sean Werdlow, to disclose any risks associated with the POC's and Swaps, and they all repeatedly reassured her and other Council persons questioning the adoption of these financial instruments that there was no risk and that these deals were in the best of interest of the City of Detroit and its residents. **Exhibit 1, attached.**
7. Ms. McPhail made clear that her time was very limited this week as she works as the Superintendent of Detroit Community Schools, a charter school operation, and that she could not be available for a deposition as well as to potentially testify at the hearing.
8. As this is the last week of class before the holiday break, there is tremendous pressure on the teachers and administrators of the District.
9. Ms. McPhail's testimony at the motion hearing, if she testifies at all, is expected to be short and simply to rebut any claims that City Officials were apprised of the risks of the POC's and swaps before they were approved.
10. At the pre-trial conference on Friday, December 13, 2013 this honorable Court explained that this hearing is somewhat of a preliminary character, to ascertain whether it would be in the interest of the estate to keep the swap agreements in the bankruptcy, where during the subsequent fairness hearings the question of potential wrongdoing in connection with these financial instruments could be explored more fully and it could be determined whether they could be subject to equitable subordination.

11. In light of the purposes of this hearing, in light of the limited testimony, if any, that Ms. McPhail is prepared to present, and especially in light of the consequences this Motion has for the people of the City of Detroit who face having approximately \$230 million of their tax dollars, at 8 ½ % interest, diverted over approximately 5 years to profit Bank of America, UBS and Barclay's, at the expense of desperately needed services to revive the City of Detroit, Interested party Sole respectfully requests that the Court entertain Ms. McPhail's testimony if it is appropriate for rebuttal purposes.

Respectfully submitted,

JEROME D. GOLDBERG, PLLC

By: /s/ Jerome D. Goldberg
Jerome D. Goldberg (P61678)
Attorney for David Sole, Party in Interest
2921 East Jefferson, Suite 205
Phone: 313-393-6001
Fax: 313-393-6007
Email: apclawyer@sbcglobal.net

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